IN THE COURT OF APPEALS OF THE STATE OF ALASKA

NATHANIEL PAUL HANLEY, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12190 Trial Court No. 3KN-14-1114 CR MEMORANDUM OPINION No. 6702 — September 19, 2018

Appeal from the Superior Court, Third Judicial District, Kenai, Charles T. Huguelet, Judge.

Appearances: Michael L. Barber, Barber Legal Services, Boston, Massachusetts, under contract with the Public Defender Agency, and Quinlan Steiner, Public Defender, Anchorage, for the Appellant. Ann B. Black, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, and Allard, Judge.

PER CURIAM.

Nathaniel Paul Hanley was convicted, following a jury trial, of third-degree assault under AS 11.41.220(a)(5), the recidivist assault statute. (Hanley committed a fourth-degree assault by recklessly causing physical injury to his girlfriend, but he was

charged with the more serious offense because he had two or more prior assault convictions within the preceding ten years.[1]) Hanley raises two claims on appeal.

Hanley's first claim is that the trial court erred when it failed to instruct the jury on factual unanimity. We find no merit to this claim. Hanley was prosecuted for a single continuous assaultive episode, which culminated in Hanley kicking his girlfriend while she lay on the road in a semi-fetal position. As we have previously explained:

> [M]ultiple blows struck in the course of a single, continuous criminal episode comprise a single assault unless [the] blows are struck at clearly separate times and in clearly separate incidents, [as] when one blow is separated from another by a change in purpose, a "fresh impulse," or a different provocation.[2]

Here, the evidence showed a single ongoing assaultive incident. The prosecutor argued the case this way, focusing in particular on the kicking as the cause of the physical injury alleged in the indictment. Given this, we agree with the superior court that there was no need for a factual unanimity instruction.

Hanley also contends that the State failed to prove beyond a reasonable doubt that he caused his girlfriend physical injury. We also find no merit to this claim.

Alaska Statute 11.81.900(a)(47) defines "physical injury" as "physical pain or an impairment of physical condition." Hanley argues that the State was unable to prove physical injury in his case because his girlfriend testified that Hanley had not assaulted her and she had not suffered any injury or pain. But this testimony was directly

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[1] *See* AS 11.41.230(a)(1) and AS 11.41.220(a)(5).

[2] *Andrew v. State*, 2018 WL 1136368, at *4 (Alaska App. Feb. 28, 2018) (unpublished) (citing *S.R.D. v. State*, 820 P.2d 1088, 1092-93 (Alaska App. 1991)) (internal quotation marks omitted).

contradicted by the other evidence presented at trial, which included eyewitness descriptions of the assault, and photographs taken by the troopers soon after the incident.

When we review a claim that the evidence is insufficient to support a criminal conviction, we do not re-weigh the evidence or assess witness credibility — that is for the jury to decide. Instead, we are required to view the evidence presented at trial — and all reasonable inferences that can be drawn from this evidence — in the light most favorable to upholding the verdict.[3] Viewing the evidence in this light, we have no difficulty concluding that a fair-minded juror exercising reasonable judgment could find that the State had proved "physical injury," as that term is defined under Alaska law, beyond a reasonable doubt.

We therefore AFFIRM the judgment of the superior court.

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[3] *Y.J. v. State*, 130 P.3d 954, 957 (Alaska App. 2006).